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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Adrian Boot,

Plaintiff,

Case No:

v.

COMPLAINT

Consequence Sound LLC,

DEMAND FOR JURY TRIAL

Defendant.

Plaintiff Adrian Boot ("*Plaintiff*"), by and through its undersigned counsel, for its Complaint against Defendant Consequence Sound LLC ("*Defendant*") states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement under the Copyright Act, 17 U.S.C §501.

2. Plaintiff created a photograph of English rock band The Clash (the "Photograph") in which Plaintiff owns the rights and licenses for various uses including online and print publications.

3. Defendant is a media company which owns and operates a website at

1 domain consequenceofsound.net (the “*Website*”).

2 4. Defendant, without permission or authorization from Plaintiff, actively
3 copied and/or displayed the Photograph on the Website and engaged in this
4 misconduct knowingly and in violation of the United States copyright laws.

5 **PARTIES**

6 5. Plaintiff Adrian Boot is an individual who is a citizen of the United
7 Kingdom and who resides in Dorset, England.

8 6. Upon information and belief, Defendant Consequence Sound LLC is a
9 Florida limited liability company with a principal place of business at 5301 North
10 Federal Highway, Boca Raton in Palm Beach County, Florida.

11 **JURISDICTION AND VENUE**

12 7. This Court has subject matter jurisdiction over the federal copyright
13 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

14 8. This Court has personal jurisdiction over Defendant because it
15 maintains its principal place of business in Florida.

16 9. Venue is proper under 28 U.S.C. §1391(a)(2) because Defendant does
17 business in this Judicial District and/or because a substantial part of the events or
18 omissions giving rise to the claim occurred in this Judicial District.

19 **FACTS COMMON TO ALL CLAIMS**

20 **A. Plaintiff's Copyright Ownership**

21 10. Plaintiff is a professional photographer by trade who is the legal and
22 rightful owner of certain photographs which Plaintiff commercially licenses.

23 11. Plaintiff has invested significant time and money in building Plaintiff's
24 photograph portfolio.

25 12. Plaintiff has obtained active and valid copyright registrations from the
26 United States Copyright Office (the “*USCO*”) which cover many of Plaintiff's
27 photographs while many others are the subject of pending copyright applications.
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1 13. Plaintiff's photographs are original, creative works in which Plaintiff
2 owns protectable copyright interests.

3 14. On January 9, 1990, Plaintiff authored the Photograph. A copy of the
4 Photograph is attached hereto as Exhibit 1.

5 15. In creating the Photograph, Plaintiff personally selected the subject
6 matter, timing, lighting, angle, perspective, depth, lens, and camera equipment used
7 to capture the image.

8 16. On January 2, 2018, the Photograph was registered by the USCO under
9 Registration No. VA 2-080-775.

10 17. Plaintiff created the Photograph with the intention of it being used
11 commercially and for the purpose of display and/or public distribution.

12 **B. Defendant's Infringing Activity**

13 18. Defendant is the registered owner of the Website and is responsible for
14 its content.

15 19. Defendant is the operator of the Website and is responsible for its
16 content.

17 20. The Website is a key component of Defendant's popular and lucrative
18 commercial enterprise.

19 21. The Website is monetized in that it contains paid advertisements and,
20 upon information and belief, Defendant profits from these activities.

21 22. The Website is further monetized in that it sells merchandise to the
22 public and, upon information and belief, Defendant profits from these activities.

23 23. On or about November 19, 2019, Defendant displayed the Photograph
24 on the Website as part of an on-line story at URL:
25 [https://consequence.net/2019/11/the-clashes-london-calling-bullet-trains-and-the-](https://consequence.net/2019/11/the-clashes-london-calling-bullet-trains-and-the-boundlessness-of-humanity/)
26 [boundlessness-of-humanity/](https://consequence.net/2019/11/the-clashes-london-calling-bullet-trains-and-the-boundlessness-of-humanity/) (the "Infringement"). A copy of a screengrab of the
27 Website including the Photograph is attached hereto as Exhibit 2.
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1 24. The Photograph was stored at URL: [https://consequence.net/wp-](https://consequence.net/wp-content/uploads/2015/01/c-adrian-boot-the-clash.jpg?quality=80&w=806&resize=1031%2C580&strip)
2 content/uploads/2015/01/c-adrian-boot-the-
3 clash.jpg?quality=80&w=806&resize=1031%2C580&strip.

4 25. Without permission or authorization from Plaintiff, Defendant
5 volitionally copied and/or displayed Plaintiff's copyright protected Photograph on
6 the Website.

7 26. Plaintiff first observed and actually discovered the Infringement on
8 April 24, 2020.

9 27. Upon information and belief, the Photograph was copied and displayed
10 by Defendant without license or permission, thereby infringing on Plaintiff's
11 copyrights in and to the Photograph (hereinafter all of the unauthorized uses set forth
12 above are referred to as the "*Infringement*").

13 28. The Infringement includes a URL ("*Uniform Resource Locator*") for a
14 fixed tangible medium of expression that was sufficiently permanent or stable to
15 permit it to be communicated for a period of more than a transitory duration and
16 therefore constitutes a specific infringement. *17 U.S.C. §106(5)*.

17 29. The Infringement is an exact copy of Plaintiff's original image that was
18 directly copied and displayed by Defendant on the Website.

19 30. Upon information and belief, Defendant takes an active and pervasive
20 role in the content posted on its Website, including, but not limited to, copying,
21 posting, selecting, commenting on and/or displaying images including, but not
22 limited to, Plaintiff's Photograph.

23 31. Upon information and belief, Defendant directly contributes to the
24 content posted on the Website by *inter alia*, directly employing reporters, authors
25 and editors as its agents, including but not limited to Mia Sato whose LinkedIn page
26 lists her as a "Reporter, The Verge" (the "*Employees*").

27 32. Upon information and belief, at all material times the Employees were
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1 acting within the course and scope of their agency when they posted the
2 Infringement.

3 33. Upon information and belief, the Photograph was willfully and
4 volitionally posted to the Website by Defendant.

5 34. Upon information and belief, Defendant is not registered as an internet
6 service provider with the USCO pursuant to 17 U.S.C. §512.

7 35. Upon information and belief, the Infringement was not posted at the
8 direction of a “user”, as that term is defined in 17 U.S.C. §512(c).

9 36. Upon information and belief, Defendant engaged in the Infringement
10 knowingly and in violation of applicable United States copyright laws.

11 37. Upon information and belief, Defendant has the legal right and ability
12 to control and limit the infringing activities on its Website and exercised and/or had
13 the right and ability to exercise such right.

14 38. Upon information and belief, Defendant monitors the content on its
15 Website.

16 39. Upon information and belief, Defendant has received a financial benefit
17 directly attributable to the Infringement.

18 40. Upon information and belief, the Infringement increased traffic to the
19 Website and, in turn, caused Defendant to realize an increase in its advertising
20 revenues and/or merchandise sales.

21 41. Upon information and belief, a large number of people have viewed the
22 unlawful copy of the Photograph on the Website.

23 42. Upon information and belief, Defendant at all times had the ability to
24 stop the reproduction and display of Plaintiff's copyrighted material.

25 43. Plaintiff created the Photograph with the intention of it being used
26 commercially and for the purpose of display and/or public distribution.

27 44. Defendant's use of the Photograph, if widespread, would harm
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1 Plaintiff's potential market for the Photograph.

2 45. On March 15, 2023, Plaintiff, via counsel, served a letter by electronic
3 mail to Defendant seeking to address the complaints contained herein concerning
4 Defendant's infringement of Plaintiff's rights-protected works, to no avail.

5 46. Despite Plaintiff's efforts and willingness to address Defendant's
6 infringing activity, Defendant has forced Plaintiff to seek redress via judicial
7 intervention for Defendant's infringing activity.

8 47. As a result of Defendant's misconduct, Plaintiff has been substantially
9 harmed.

10 **FIRST COUNT**

11 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

12 48. Plaintiff repeats and incorporates by reference the allegations contained
13 in the preceding paragraphs, as though set forth in full herein.

14 49. The Photograph is an original, creative work in which Plaintiff owns a
15 valid copyright.

16 50. The Photograph is properly registered with the USCO and Plaintiff has
17 complied with all statutory formalities under the Copyright Act and under
18 regulations published by the USCO.

19 51. Plaintiff has not granted Defendant a license or the right to use the
20 Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in
21 the copyright to Defendant.

22 52. Without permission or authorization from Plaintiff and in willful
23 violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and
24 illegally copied, reproduced, distributed, adapted, and/or publicly displayed works
25 copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its
26 copyrights.

27 53. Defendant's reproduction of the Photograph and display of the
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1 Photograph constitutes willful copyright infringement.

2 54. Upon information and belief, Defendant willfully infringed upon
3 Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that
4 Defendant used, published, communicated, posted, publicized, and otherwise held
5 out to the public for commercial benefit, Plaintiff's original and unique Photograph
6 without Plaintiff's consent or authority, by using it on the Website.

7 55. As a result of Defendant's violation of Title 17 of the U.S. Code,
8 Plaintiff is entitled to any an award of actual damages and disgorgement of all of
9 Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504
10 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for
11 statutory damages against Defendant for the infringement pursuant to 17 U.S.C. §
12 504(c).

13 56. As a result of the Defendant's violation of Title 17 of the U.S. Code, the
14 court in its discretion may allow the recovery of full costs as well as reasonable
15 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

16 57. As a result of Defendant's violation of Title 17 of the U.S. Code,
17 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his
18 copyright pursuant to 17 U.S.C. § 502.

19 **SECOND COUNT**
20 ***(Vicarious Copyright Infringement)***

21 58. Plaintiff repeats and incorporates, as though fully set forth herein, each
22 and every allegation contained in the preceding paragraphs, as though set forth in
23 full herein.

24 59. Upon information and belief, at all material times hereto, Defendant
25 had the right and ability to supervise and/or control the infringing conduct of its
26 Employees, Agents and members, and declined to exercise the right and ability to
27 supervise or control that infringing conduct, despite its legal right to stop or limit the
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1 directly infringing conduct as well as the practicable ability to do so.

2 60. For example, upon information and belief, Defendant had the practical
3 ability to police the images on the Website when its Employees edited, modified
4 and/or interacted with the Photograph, and therefore had the right and ability to
5 supervise and control the Infringement.

6 61. As a direct and proximate result of such refusal to exercise its right to
7 stop or limit the infringing conduct, Defendant's members have continued to infringe
8 upon Plaintiff's Photograph, which in turn generates profits for Defendant directly
9 from the use of the Infringement.

10 62. Defendant enjoyed a direct financial benefit from the Infringement of
11 its members, Employees and agents from *inter alia*, advertising revenue from the
12 increased traffic to its Website.

13 63. Upon information and belief, Defendant enjoyed a directed financial
14 benefit from using the appeal or "draw" of Plaintiff's Photograph to increase user
15 traffic to the Website, thereby increasing advertising revenue.

16 64. Accordingly, Defendant is liable as a vicarious infringer since it
17 profited from direct infringement while declining to exercise a right to stop or limit
18 it.

19 65. Upon information and belief, Defendant willfully vicariously infringed
20 upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code.

21 66. As a result of Defendant's violation of Title 17 of the U.S. Code,
22 Plaintiff is entitled to an award of actual damages and disgorgement of all of
23 Defendant's profits attributable to the Infringement as provided by 17 U.S.C. §
24 504(b) in an amount to be proven or, in the alternative, at Plaintiff's election, an
25 award for statutory damages against Defendant for the work infringed pursuant to
26 17 U.S.C. § 504(c).

27 67. As a result of the Defendant's violation of Title 17 of the U.S. Code, the
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1 court in its discretion may award Plaintiff the recovery of its reasonable attorney's
2 fees and costs pursuant to 17 U.S.C. § 505.

3 68. As a result of Defendant's violation of Title 17 of the U.S. Code,
4 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his
5 copyrights pursuant to 17 U.S.C. § 502.

6 **JURY DEMAND**

7 69. Plaintiff hereby demands a trial of this action by jury.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE** Plaintiff respectfully requests judgment as follows:

10 That the Court enters a judgment finding that Defendant has infringed upon
11 Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 *et seq.* and
12 therefore award damages and monetary relief as follows:

- 13 a. finding that Defendant infringed upon Plaintiff's copyright
14 interest in and to the Photograph by copying and displaying it
15 without a license or consent;
- 16 b. for an award of actual damages and disgorgement of all of
17 Defendant's profits attributable to the infringement as provided
18 by 17 U.S.C. § 504(b) in an amount to be proven or, in the
19 alternative, at Plaintiff's election, an award for statutory damages
20 against Defendant for the infringement pursuant to 17 U.S.C. §
21 504(c), whichever is larger;
- 22 c.
- 23 d. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant
24 from any infringing use of any of Plaintiff's works;
- 25 e. for costs of litigation and reasonable attorney's fees against
26 Defendant pursuant to 17 U.S.C. § 505;
- 27 f. for pre-judgment interest as permitted by law; and
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1 g. for any other relief the Court deems just and proper.

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3 DATED: April 6, 2023

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